

Part 17 – Special Contracting Methods

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17.000 Scope of part.

This part prescribes policies and procedures for the acquisition of supplies and services through special contracting methods, including—

- (a) Multiyear contracting;
- (b) Options;
- (c) Leader company contracting; and
- (d) Interagency acquisitions;
- (e) Management and operating contracts; and
- (f) Reverse auctions

Subpart 17.1 - Multiyear Contracting

17.101 Authority.

This subpart prescribes policies and procedures for acquiring supplies or services through multiyear contracting, as authorized by 10 U.S.C. 3501 and 41 U.S.C. 3903. It addresses requirements for presolicitation planning, solicitation content, evaluation and award, funding, and cancellation provisions unique to multiyear contracts.

17.102 Definitions.

As used in this subpart—

Cancellation means the cancellation (within a contractually specified time) of the total requirements of all remaining program years. Cancellation results when the contracting officer-

(1) Notifies the contractor of nonavailability of funds for contract performance for any subsequent program year; or

(2) Fails to notify the contractor that funds are available for performance of the succeeding program year requirement.

Cancellation ceiling means the maximum cancellation charge that the contractor can receive if the contract is cancelled.

Cancellation charge means the amount of unrecovered costs which would have been recouped through amortization over the full term of the contract, including the canceled term.

Multi-year contract means a contract for the purchase of supplies or services for more than 1, but not more than 5 program years. A multiyear contract may provide that performance under the contract during the second and subsequent years of the contract is contingent upon the appropriation of funds, and (if it does so provide) may provide for a cancellation payment to be made to the contractor if appropriations are not made. The key distinguishing difference between multiyear contracts and multiple year contracts is that multiyear contracts buy more than 1 year's requirement (of a product or service) without establishing and having to exercise an option for each program year after the first.

Nonrecurring costs means costs that are generally incurred on a one-time basis and include such costs as plant or equipment relocation, plant rearrangement, special tooling and special test equipment, preproduction engineering, preliminary design effort, initial spoilage and rework, and specialized work force training.

Recurring costs means costs that vary with the quantity being produced, such as labor and materials, and are the ongoing expenses associated with its production and maintenance.

17.103 Presolicitation.

17.103-1 Policy.

(a) Except for DoD, NASA, and the Coast Guard, the contracting officer may enter into a multi-year contract if the head of the contracting activity determines that—

(1) The need for the supplies or services is reasonably firm and continuing throughout the contract period; and

(2) A multiyear contract will serve the best interest of the Government by either encouraging competition or promoting economy in program administration, performance, and operation.

(b) For DoD, NASA, and the Coast Guard, the head of the agency may enter into a multiyear contract for supplies if—

- (1) The contract will save significant costs compared to using annual contracts, or will provide necessary stability to the defense industrial base not otherwise achievable through annual contracts;
- (2) The required purchase amounts are expected to remain substantially unchanged throughout the contract period, in terms of production and procurement rates and total quantities;
- (3) The agency head is reasonably expected to request sufficient funding throughout the contract period at a level required to avoid contract cancellation;
- (4) The design of the supplies is stable, and technical risks are not excessive;
- (5) Both the contract cost estimates and projected cost avoidance through the use of a multiyear contract are realistic;
- (6) For Department of Defense purchases, the contract will promote national security of the United States; and
- (7) For Department of Defense contracts valued at \$500,000,000 or more, the Secretary certifies that the conditions in 10 U.S.C. 3501 (i)(3) subparagraphs (C) through (F) will be met.

17.103-2 Procedures.

(a) *Method of contracting.* The specific requirement should guide the selection of the contracting method.

(b) *Funding.*

- (1) Agency funding of multiyear contracts must follow the policies in OMB Circular A-11 (Preparation, Submission, and Execution of the Budget) and other applicable guidance on funding multiyear contracts.
- (2) Multiyear contracts for fixed assets should be either-
 - (i) Fully funded; or
 - (ii) Funded in economically or programmatically viable stages.

17.103-3 Solicitations.

(a) In solicitations for multiyear contracts, the contracting officer must include-

(1) The supply or service requirements for the first program year, and the entire multiyear contract period, broken down by program year;

(2) A statement that if the Government only needs the first-year requirements, evaluation will be based on first year pricing;

(3) A provision requiring a cancellation ceiling (as a percentage or dollar amount) and applicable dates for each program year that could be cancelled; and

(4) A statement that the Government will not award less than the first program year requirements.

(b) The solicitation must explain how the Government will compare offers for the first year against offers for the entire multiyear period. This applies to both sealed bidding and negotiated acquisitions.

17.104 Evaluation and Award.

17.104-1 General.

Contracting officers must follow the appropriate acquisition policies and procedures (such as those in parts 14 and 15). In addition, contracting officers must comply with the requirements unique to multiyear contracting in this section, including cancellation procedures, congressional notification, and funding obligations at award.

17.104-2 Cancellation provisions.

(a) *Cancellation procedures.*

(1) All program years except the first are subject to cancellation.

(2) For each program year subject to cancellation, the contracting officer must—

(i) Set a cancellation ceiling;

(ii) Not include amounts for requirements from prior program years; and

(iii) Lower the cancellation ceiling proportionally as requirements are completed.

(3) When calculating cancellation ceilings, the contracting officer must—

(i) Estimate reasonable startup costs, learning curve costs, and other nonrecurring costs; and

(ii) Not include labor, materials, or other costs related to future program years.

(4) Set specific cancellation dates for each program year based on production needs and funding availability. These dates must be in the contract schedule.

(b) *Revising ceilings or dates.* The contracting officer may revise cancellation ceilings or dates after solicitation release when necessary. For sealed bidding, changes must be made by amendment before bid opening. In negotiated acquisitions, discussions may reveal a need for changes before final award.

17.104-3 Congressional notification.

(a) Except for DoD, NASA, and the Coast Guard, a multiyear contract with a cancellation ceiling over \$20 million may not be awarded until the agency head notifies Congress in writing.

(b) For DoD, NASA, and the Coast Guard, when the ceiling is over \$200 million, the agency head must notify the House and Senate armed services and appropriations committees in writing.

(c) The contract may not be awarded until 31 days after notification.

17.104-4 Funding at award.

(a) At award, obligated funds must cover either—

(1) The full contract period; or

(2) The first fiscal year plus any potential cancellation and termination costs.

(b) The contract must state the funded amount for the first program year and any amounts for cancellation or termination.

17.104-5 Special procedures for DoD, NASA, and the Coast Guard.

(a) *Participation by subcontractors and suppliers.* To the extent practicable, structure multiyear contracts to attract and retain a diverse defense industrial base.

(b) *Protection of existing authority.* To the extent practicable, multiyear contracting must not limit an agency's ability to maintain competition or terminate contracts based on performance deficiencies related to cost, quality, or schedule.

(c) *Property.* Multiyear contracts must be—

(1) Firm-fixed-price;

(2) Fixed-price with economic price adjustment; or

(3) Fixed-price incentive.

(d) *Level unit prices.* Where appropriate, the contracting officer should negotiate level unit prices for the items to be delivered in each program year.

17.105 Postaward.

(a) Termination vs. cancellation. The termination for convenience procedure applies to any Government contract, including multiyear contracts. Termination differs from cancellation in these ways:

(1) Timing. Termination can occur anytime during the contract life, while cancellation happens between fiscal years.

(2) Quantity. Termination can apply to total or partial quantities, while cancellation must apply to all quantities for future fiscal years.

(b) Funding limitations upon termination. If funds are not available to continue a multiyear contract into the next fiscal year, the contract must be canceled or terminated. If the Government terminates the entire contract for convenience, including all cancellable requirements, the Government obligation is no more than:

(1) The amount specified as available for contract performance; plus

(2) The applicable cancellation ceiling.

17.106 Contract clauses.

(a) The contracting officer must insert the clause at 52.217-2, Cancellation Under Multiyear Contracts, in solicitations and contracts when a multiyear contract is contemplated.

(b) When the production period may cause an offeror to include a labor or material cost contingency in the contract price, consider using an economic price adjustment clause (see part 16).

(c) For service contracts, the contracting officer-

(1) Must include the clause at 52.222-43, Fair Labor Standards Act and Service Contract Labor Standards—Price Adjustment (Multiple Year and Option Contracts), when the contract includes the clause at 52.222-41, Service Contract Labor Standards;

(2) May modify the clause at 52.222-43 in overseas contracts when laws, regulations, or international agreements require contractors to pay higher wage rates; or

(3) May use an economic price adjustment clause authorized by part 16, when price changes require coverage and are not included in not already addressed by the clause at 52.222-43.

Subpart 17.2 - Options

17.200 Scope of subpart.

This subpart prescribes policies and procedures for the use of option solicitation provisions and contract clauses. Except as provided in agency regulations, this subpart does not apply to contracts for (a) services involving the construction, alteration, or repair (including dredging, excavating, and painting) of buildings, bridges, roads, or other kinds of real property; (b) architect-engineer services; and (c) research and development services. However, it does not preclude the use of options in those contracts.

17.201 Presolicitation.

17.201-1 Use of options.

(a) In contracting by sealed bidding or negotiation, the contracting officer may add options to contracts when beneficial to the Government, within the limitations in paragraphs (b) and (c). For sealed bidding, before including the provision at 52.217-5, Evaluation of Options, the contracting officer must document in writing that there is a probability that the Government will exercise the options.

(b) Inclusion of an option is normally not beneficial to the Government when the contracting officer determines that:

(1) The Government's needs involve-

(i) Minimum economic quantities (enough volume to permit the recovery of startup costs and the production of supplies at reasonable prices); and

(ii) Delivery needs far enough in the future to allow for a new competitive contract.

(2) An indefinite quantity or requirements contract better meets the government's needs. However, these contract types may still include options if appropriate.

(c) The contracting officer must not use options when-

(1) Price or availability of necessary material or labor is not reasonably foreseeable, introducing significant risk into option pricing; or

(2) Market prices for the supplies or services are likely to change significantly.

17.201-2 Contracts.

(a) The contract must clearly state limits on-

(1) The additional supplies or services the Government may purchase including the number, type, frequency or duration; or

(2) The contract duration, including any extensions.

(b) The contracting officer must—

(1) Specify in the contract the period within which the option may be exercised, allowing adequate lead time for the contractor to ensure continuous production; and

(2) Follow any statutory limits on contract duration (for example, under the Service Contract Labor Standards statute—see part 22).

17.202 Evaluation and award.

(a) Prior to awarding the basic contract, the contracting officer must evaluate offers for option quantities or periods included in the solicitation.

(b)

(1) The contracting officer may skip the evaluation of option quantities when such evaluation would not benefit the Government. This exception should be reserved for rare instances.

(2) This decision must be—

(i) In writing;

(ii) Approved at least one level above the contracting officer; and

(iii) Included in the contract file.

17.203 Solicitation provisions and contract clauses.

(a) Insert a provision substantially the same as the provision at 52.217-3, Evaluation Exclusive of Options, in solicitations when the solicitation includes an option clause but does not include the provision described in either paragraph (b) or (c) of this section.

(b) Insert a provision substantially the same as the provision at 52.217-4, Evaluation of Options Exercised at Time of Contract Award, in solicitations when-

(1) The solicitation includes an option clause; and

(2) The contracting officer determines there is a reasonable likelihood of option exercised when the contract is awarded.

(c) Insert a provision substantially the same as the provision at 52.217-5, Evaluation of Options, in solicitations when-

- (1) The solicitation includes an option clause; and
- (2) The contracting officer determines there is a reasonable likelihood of exercise, and the option will not be exercised at the time of contract award.
- (d) Insert a provision substantially the same as the clause at 52.217-6, Option for Increased Quantity, in solicitations and contracts, except those for services, when adding an option is appropriate (see 17.201), and the option quantity appears as a percentage of the basic contract quantity or as additional quantities of a specific line item.
- (e) Insert a provision substantially the same as the clause at 52.217-7, Option for Increased Quantity—Separately Priced Line Item, in solicitations and contracts, except those for services, when adding an option is appropriate (see 17.201), and the option quantity appears as a separate line item with the same name as a corresponding basic line item.
- (f) Insert a provision substantially the same as the clause at 52.217-8, Options to Extend Services, in solicitations and contracts for services when adding an option is appropriate. (See 17.201 and part 37).
- (g) Insert a provision substantially the same as the clause at 52.217-9, Option to Extend the Term of the Contract, in solicitations and contracts when adding an option is appropriate (see 17.201) and the contract needs to include any of these elements:
 - (1) A requirement for the Government to give the contractor advance written notice of intent to extend;
 - (2) A statement that an extension of the contract also extends the option; or
 - (3) A specific limit on the total contract duration.

17.204 Postaward.

17.204-1 Exercise of options.

- (a) If the contract includes an economic price adjustment clause and the contractor requests a price revision, the contracting officer must determine how the adjustment affects option prices before exercising the option.
- (b) The contracting officer may exercise options only after—
 - (1) Providing written notice to the contractor of the Government's intention to exercise the option, within the time specified in the contract;
 - (2) Confirming that funds are available; and
 - (3) Determining that—

- (i) The option fulfills an existing Government requirement;
- (ii) The option was synopsized as required, unless exempt (see part 5);
- (iii) The Contractor does not have an active exclusion record in the System for Award Management (see part 9);
- (iv) The contractor's performance on the current contract has been acceptable (for example, satisfactory or better performance ratings);
- (v) After reviewing price and other factors, the option price is fair and reasonable based on current market conditions and exercise of the option is in the Government's best interest; and
- (vi) The option exercise complies with the requirements of part 6 for full and open competition, i.e., the option was evaluated as part of the initial competition and is exercisable at an amount specified in or reasonably determinable from the terms of the contract.

Subpart 17.3 - [Reserved]

Subpart 17.4 - Leader Company Contracting

17.401 Policy.

Leader company contracting is an extraordinary acquisition technique, limited to special circumstances, and may only be used in accordance with agency procedures. Under this technique, a developer or sole producer of a product or system is designated as the leader company. The leader company is responsible for furnishing assistance and proprietary know-how under an approved contract to one or more designated follower companies. The purpose is to enable those follower companies to qualify as sources of supply for the product or system, thereby expanding the industrial base and promoting competition.

Subpart 17.5 - Interagency Acquisitions

17.500 Scope of subpart.

(a) This subpart prescribes policies and procedures for all interagency acquisitions under any authority, except as provided in paragraph (c) of this section. When nondefense agencies acquire supplies or services on behalf of the Department of Defense, the requirements in subpart 17.7 also apply.

- (b) This subpart applies to interagency acquisitions as defined in 2.101, when an agency:
- (1) Requires supplies or services and uses another agency's contract; or
 - (2) Requests another agency to provide acquisition assistance, including but not limited to awarding or administering a contract, task order, or delivery order.
- (c) This subpart does not apply to-
- (1) Reimbursable work performed by one agency's employees for another agency (except acquisition assistance), or interagency activities where contracting is not the primary purpose; or
 - (2) Orders at or below \$750,000 issued against Federal Supply Schedules.

17.501 General.

- (a) Interagency acquisitions are usually conducted through indefinite-delivery contracts.
- (b) An interagency acquisition must not be used to circumvent statutory or regulatory restrictions on the obligation or use of funds.
- (c) An interagency acquisition must not conflict with another agency's statutory authority or responsibility. For example, the Administrator of General Services has authority under 40 U.S.C. "Public Buildings, Property, and Works" and 41 U.S.C. division C of subtitle I ("Procurement").

17.502 Procedures.

17.502-1 General.

- (a) *Written agreement on responsibility for management and administration.*
 - (1) *Assisted acquisitions.*
 - (i) Before issuing a solicitation, both the servicing agency and requesting agency must sign a written interagency agreement that establishes the basic terms and conditions governing the relationship, which must include—
 - (A) The roles and responsibilities for acquisition planning;
 - (B) Contract execution; and
 - (C) Administration and management of the contract(s) or order(s).
 - (ii) The requesting agency must—

(A) Provide the servicing agency for incorporation into the order or contract, any unique requesting agency terms, conditions and applicable agency-specific statutes, regulations, directives, and other applicable requirements, or

(B) Inform the servicing agency contracting officer in writing that there are no special requirements beyond the FAR.

(iii) For assisted acquisitions for the Department of Defense, also see subpart 17.6.

(iv) Agencies should follow applicable Office of Federal Procurement Policy guidance on Interagency Acquisitions when creating these agreements.

(v) Both agencies must keep the signed agreement in their files along with sufficient documentation to permit a proper audit.

(2) *Direct acquisitions.* When the requesting agency administers the order itself, no written agreement with the servicing agency is required.

(b) *Business-case analysis requirements for multi-agency contracts and governmentwide acquisition contracts.* In accordance with section 865 of Public Law 110-417, the agency business case must address how the contract will be administered, analyze all direct and indirect costs of awarding and administering the contract, and describe the impact the contract will have on the Government's ability to leverage its purchasing power. For example, the analysis should address whether the new contract could dilute the effectiveness of existing contracts. For additional requirements see OMB Memorandum M-19-13.

17.502-2 The Economy Act.

(a) The Economy Act ([31 U.S.C. 1535](#))—

(1) Authorizes agencies to enter into agreements to obtain supplies or services from other agencies. The FAR applies when one agency uses another agency's contract. If the transaction between agencies does not result in a contract or order, the FAR does not apply;

(2) Allows orders between major organizational units within the same agency. Agencies should address the procedures for these intra-agency transactions in agency regulations; and

(3) Applies when more specific statutory authority does not exist, such as 40 U.S.C. 501 for Federal Supply Schedules (see part 8) or 40 U.S.C. 11302(e) for Governmentwide acquisition contracts (GWACs).

(b) Each Economy Act order must be supported by a determination and findings (D&F) that must:

- (1) State that the inter-agency acquisition is in the best interest of the Government;
- (2) State that the supplies or services cannot be obtained as conveniently or cheaply by contracting directly with a private source; and
- (3) State which one (or more) of these conditions is true:
 - (i) The servicing agency has an existing contract that was created before this order and meets the same needs.
 - (ii) The servicing agency has expertise or abilities to enter a contract that is not available within the requesting agency.
- (4) The D&F must be approved by a contracting officer from the requesting agency with authority to contract for these supplies or services. Alternatively, an official designated by the agency head may approve it. If the servicing agency is not subject to the FAR, approval may not be delegated below the senior procurement executive of the requesting agency.
- (5) The requesting agency must send a copy of the D&F to the servicing agency with their order request.

(c) Payment.

- (1) The servicing agency may request advance payment for estimated costs in writing. Adjustments based on actual costs must be made as agreed to by the agencies.
- (2) If the servicing agency approves, the requesting agency may pay actual costs after receiving the supplies or services.
- (3) Bills rendered or advance payment requests must not be subject to audit or certification in advance of payment.
- (4) The servicing agency must not charge, and the requesting agency must not pay, any fee exceeding the actual cost (or estimated cost if actual cost is unknown) of entering into and administering the contract or agreement under which the order is filled.

17.503 Ordering procedures.

- (a) Before placing an order for supplies or services with another Government agency, the requesting agency must follow the procedures in 17.502-1 and, if under the Economy Act, 17.502-2.
- (b) The order may be placed on any form or document that both agencies accept. The order should include—
 - (1) A description of the supplies or services required;

(2) Delivery requirements;

(3) A funds citation;

(4) A payment provision (see 17.502-2(c) for Economy Act orders); and

(5) Acquisition authority as may be appropriate (see 17.503(d)).

(c) The requesting and servicing agencies should agree to procedures for resolving disagreements that may arise under interagency acquisitions. When appropriate, this may include using a third-party forum. If a third party is proposed, that party should provide their written consent.

(d) When an interagency acquisition requires the servicing agency to award a contract, these additional procedures apply:

(1) If law or regulation requires a justification and approval or a D&F (other than the requesting agency's D&F required in 17.502-2(c)), the servicing agency must prepare and issue it. The requesting agency must provide any information needed for the justification and approval or D&F.

(2) The requesting agency must provide other necessary assistance, such as information or special contract terms needed to comply with any conditions or limitations on the requesting agency's funds.

(3) The servicing agency is responsible for compliance with all other legal or regulatory requirements for the contract, including—

(i) Having proper legal authority for the contract action; and

(ii) Following all competition requirements in part 6. If the servicing agency is not subject to the FAR, the requesting agency must verify that contracts used to meet its requirements contain provisions protecting the Government from inappropriate charges (for example, provisions required by part 31). The requesting agency must also verify that adequate contract administration will be provided.

(e) Nonsponsoring Federal agencies may use a Federally Funded Research and Development Center (FFRDC) only if the terms of the FFRDC's sponsoring agreement allow work from agencies other than the sponsor. Work given to the FFRDC requires the sponsor's acceptance and must fall within the FFRDC's purpose, mission, general scope of effort, or special expertise. (See part 35 and part 6 for procedures when using other than full and open competition.) The nonsponsoring agency must provide documentation to the sponsoring agency showing that the requested work would not place the FFRDC in direct competition with domestic private industry.

17.504 Reporting requirements.

(a) The senior procurement executive for each executive agency must submit an annual report on interagency acquisitions to the Director of OMB, as directed by OMB.

(b) The contracting officer for the servicing agency must ensure all service contractor reporting requirements are met in accordance with part 4.

Subpart 17.6 - Interagency Acquisitions: Acquisitions by Nondefense Agencies on Behalf of the Department of Defense

17.600 Scope of subpart.

(a) Compliance with this subpart is required in addition to the policies and procedures for interagency acquisitions in subpart 17.5. This subpart establishes policies and procedures specifically for acquisitions of supplies and services by nondefense agencies on behalf of the Department of Defense (DoD).

(b) This subpart implements Public Law 110-181, section 801, as amended (10 U.S.C. 3201 note prec.).

17.601 Definitions.

As used in this subpart—

Department of Defense (DoD) acquisition official means—

(1) A DoD contracting officer; or

(2) Any other DoD official authorized to approve a direct acquisition or an assisted acquisition on behalf of DoD.

Nondefense agency means any department or agency of the Federal Government other than the Department of Defense.

Nondefense agency that is an element of the intelligence community means the agencies identified in 50 U.S.C. 3003(4).

17.602 Applicability.

(a) This subpart applies to all acquisitions made by nondefense agencies on behalf of DoD.

(b) This subpart does not apply to contracts entered into by a nondefense agency that is an element of the intelligence community for a joint program that meets the needs of both DoD and the nondefense agency.

17.603 Policy.

(a) A DoD acquisition official may request a nondefense agency to conduct an acquisition on behalf of DoD above the simplified acquisition threshold only if the head of the nondefense agency has certified that the agency will comply with applicable procurement requirements for that fiscal year, except when waived as provided by paragraph (e) of this section.

(b) A nondefense agency is compliant with applicable procurement requirements if its procurement policies, procedures, and internal controls for acquisitions on behalf of DoD, and their administration, adequately ensure the nondefense agency complies with—

(1) The Federal Acquisition Regulation and other laws and regulations that apply to procurements of supplies and services by Federal agencies; and

(2) Laws and regulations that apply to procurements of supplies and services made by DoD through other Federal agencies, including DoD financial management regulations, the Defense Federal Acquisition Regulation Supplement (DFARS), DoD class deviations, and the DFARS Procedures, Guidance, and Information (PGI). (The DFARS, DoD class deviations, and PGI are available at: <http://www.acq.osd.mil/dpap/dars>).

(c) Within 30 days of the beginning of each fiscal year, submit nondefense agency certifications of compliance to the Principal Director, Defense Pricing and Contracting at: Department of Defense, Office of the Under Secretary of Defense (Acquisition and Sustainment), Defense Pricing and Contracting, Contract Policy, Room 3B938, 3060 Defense Pentagon, Washington DC 20301-3060.

(d)

(1) The DoD acquisition official must provide the servicing nondefense agency contracting officer with any DoD-unique terms, conditions, other related statutes, regulations, directives, or other applicable requirements for incorporation into the order or contract.

(2) If there are no DoD-unique requirements beyond the FAR, the DoD acquisition official must inform the servicing nondefense agency contracting officer in writing.

(3) Nondefense agency contracting officers are responsible for ensuring support provided in response to DoD's request complies with paragraph (b) of this section.

(e) Waiver. The limitation in paragraph (a) of this section does not apply to acquisitions of supplies and services on behalf of DoD by a nondefense agency during any fiscal year for which the Under Secretary of Defense for Acquisition and Sustainment has determined in writing that it is necessary in DoD's interest to acquire supplies and services through the

nondefense agency during that fiscal year. The written determination must identify the acquisition categories to which the waiver applies.

(f) Nondefense agency certifications, waivers, and additional information are available at <https://www.acq.osd.mil/asda/dpc/cp/policy/interagency-acquisition.html>

Subpart 17.7 – Management and Operating Contracts

17.700 Scope of subpart.

This subpart establishes policies and procedures for management and operating contracts for the Department of Energy and any other agencies with the necessary statutory authority.

17.701 Definition.

Management and operating contract means an agreement where the Government contracts for the operation, maintenance, or support, on its behalf, of a Government-owned or -controlled research, development, special production, or testing facility that primarily serves one or more major programs of the Federal agency.

17.702 Presolicitation.

17.702-1 Policy.

The head of an agency, without power of delegation, and with statutory authority, may authorize contracting officers, in writing, to enter into or renew management and operating contracts. This authorization must comply with the agency's statutory authority or 41 U.S.C. chapter 33, and the agency's regulations for such contracts. Every authorized contract must state this authorization on its face.

17.702-2 Limitations.

(a) Management and operating contracts must not be authorized for—

- (1) Functions involving direction, supervision, or control of Government personnel, except supervision related to training;
- (2) Functions involving the exercise of police or regulatory powers in the Government's name, other than guard or plant protection services;
- (3) Functions determining basic Government policies;

(4) Day-to-day staff or management functions of the agency or any of its elements; or

(5) Functions that can be better accomplished by the use or rental of Government property under subpart 45.3, Authorizing the Use and Rental of Government Property.

(b) Since an authorization under 17.702-1 is considered sufficient proof of compliance with paragraph (a) above, nothing in paragraph (a) affects the validity or legality of such an authorization.

(c) For use of project labor agreements, see part 22.

17.703 Award, renewal, and extension.

(a) Effective performance under management and operating contracts typically requires high expertise levels and continuity in operations and personnel. Due to program requirements and the unusual or unique nature of work performed under these contracts, the Government often has limited ability to create competition or replace a contractor. Therefore, contracting officers must take extraordinary steps before award to ensure that—

(1) The prospective contractor has sufficient technical and managerial capacity,

(2) Organizational conflicts of interest are adequately addressed; and

(3) The contract gives the Government broad and continuing rights to involve itself in technical and managerial decision making about performance, when necessary.

(b) The contracting officer must review each management and operating contract, following agency procedures, at appropriate intervals and at least once every 5 years.

(1) The review should determine if meaningful improvement in performance or cost might reasonably be achieved.

(2) Any extension or renewal of a management and operating contract must be authorized at a level within the agency no lower than the level at which the original contract was authorized under 17.702-1.

(c) Replacing an incumbent contractor is usually based largely on expectations of meaningful improvement in performance or cost. When reviewing contractor performance, contracting officers should consider—

(1) The incumbent contractor's overall performance, specifically including technical, administrative, and cost performance;

(2) The potential impact of changing contractors on program needs, including safety, national defense, and mobilization considerations; and

(3) Whether qualified offerors are likely to compete for the contract.

Subpart 17.8 - Reverse Auctions

17.800 Scope of subpart.

This subpart prescribes policies and procedures for conducting reverse auctions and using reverse auction service providers.

17.801 Definitions.

As used in this subpart—

Government data means any information, document, media, or machine-readable material regardless of physical form or characteristics, that is created or obtained by the Government in the course of official Government business.

Government-related data means any information, document, media, or machine-readable material regardless of physical form or characteristics that is created or obtained by a contractor through the storage, processing, or communication of Government data. This does not include a contractor's business records (*e.g.*, financial records, legal records, etc.) or data such as operating procedures, software coding, or algorithms that are not uniquely applied to the Government data.

Reverse auction service provider means a commercial or Government entity that provides a means for conducting reverse auctions when acquiring supplies or services to be used by the Government.

17.802 Presolicitation.

17.802-1 Policy.

(a) Reverse auctions may be appropriate when market research shows that—

- (1) A competitive marketplace exists for the supplies and/or services being acquired;
 - (2) Multiple offerors can meet the agency's requirement; and
 - (3) The nature of the supplies and/or services (such as clearly defined specifications or less complex requirements) supports an iterative bidding process.
- (b) The reverse auction process is used to obtain pricing for an acquisition. When using reverse auctions, contracting officers must still follow the appropriate acquisition policies and procedures (such as those in parts 8, 13, 15 or 16).
- (c) When acquiring reverse auction services from a commercial provider, agencies must—
- (1) Use competitive procedures, unless an exception applies;

- (2) Detail the provider's fee structure in the resulting contract or agreement; and
- (3) Make the contract or agreement details, including the fee structure, available to contracting officers to consider when deciding whether to use that provider, as required by subpart 17.802-3.

(d) When acquiring reverse auction services, the contracting officer must ensure the solicitation and contract include—

(1) Descriptions of Government data and Government-related data.

(2) Data ownership, licensing, delivery, and disposition instructions for relevant types of Government data and Government-related data (such as DD Form 1423, Contract Data Requirements List, work statement task, line item).

(3) Disposition instructions that must allow for data transition in commercially available or open and non-proprietary format and for permanent records according to National Archives and Records Administration guidance.

(e) Contracting officers must only use reverse auction service providers that—

(1) Do not claim or imply they can or will obtain a Government contract for auction participants;

(2) Allow entities to register for free as potential offerors for Government reverse auctions on their platform;

(3) Allow each entity, during registration, to sign a proprietary data protection agreement with the provider that does not affect Government solicitation or contract terms;

(4) Protect from unauthorized use or disclosure and do not release outside the Government—

(i) All contractor bid or proposal information and source selection information related to providing reverse auction services to the Government;

(ii) All information generated to support issuing a task order, delivery order, or order under a blanket purchase agreement; and

(iii) Information an offeror identifies as restricted from duplication, use, or disclosure for any purpose except evaluating the reverse auction participant's price or proposal;

(5) Allow offerors to see the successive lowest price(s) offered in the auction without revealing offerors' identities;

(6) At the close of each auction—

- (i) Provide the Government with the apparent successful offer, including information that separately identifies the offeror's price and the price for each provider fee or charge in the total price; and
- (ii) Provide the Government with all information and documentation received from offerors responding to the reverse auction;
- (7) Do not participate as an offeror in any reverse auction they host for the Government. This prohibition includes participation by any entity with which the provider has a relationship creating an actual or potential conflict of interest; and
- (8) Assert no rights or license in the data gathered or generated during a reverse auction.
- (f) Only a contracting officer may—
 - (1) Exclude an offeror from participating in an auction;
 - (2) Determine the awardee(s) of any reverse auction; or
 - (3) Determine that the offeror is a responsible prospective contractor (see part 9).

17.802-2 Applicability.

Reverse auction processes must not be used for—

- (a) Design-build construction contracts (see part 36);
- (b) Procurements for architect-engineer services subject to [40 U.S.C. chapter 11](#) (see part 36);
- (c) Procurements using sealed bidding procedures (see part 14); or
- (d) Acquisition of personal protective equipment, in accordance with Sections 813 and 814 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017 (Pub. L. 114-328); Section 882 of the NDAA for FY 2018 (Pub. L. 115-91); and Section 880 of the John S. McCain NDAA for FY 2019 (Pub. L. 115-232, 41 U.S.C. 3701 note).

17.802-3 Reverse auction service provider.

When considering using a reverse auction service provider, the contracting officer must—

- (a) Conduct market research of available sources of reverse auction services (such as existing agency contracts or agreements, commercial service providers, or Government service providers);
- (b) Evaluate the fee structure for each reverse auction service provider; and

(c) Document in the contract file that using a reverse auction service provider is cost effective.

17.803 Evaluation and award.

(a) When conducting a reverse auction, the contracting officer must—

(1) Not reveal the identity of offeror(s) except for the awardee's identity after making an award from the auction;

(2) Allow offerors to continually revise their prices downward during the reverse auction until it closes; and

(3) Allow an offeror to withdraw an offer before the auction closes.

(b) When using reverse auction service providers, contracting officers must—

(1) Include contact information, including the contracting officer name and email address, in the synopsis and solicitation so offerors can contact the contracting officer directly with questions;

(2) Upon receiving a successful offer, verify that any provider fees or charges in the price match the provider's fee structure; and

(3) Include in the contract file any information and/or documentation received by the reverse auction service provider from offerors responding to the reverse auction.

(c) If only one offeror participates in an auction, the contracting officer may—

(1) Cancel the auction and document the contract file with evidence of single offeror participation; or

(2) Accept the offer, but only if the price is determined to be fair and reasonable.

17.804 Solicitation provision and contract clauses.

(a) Insert the provision at 52.217-10, Reverse Auction, in solicitations when using a reverse auction to award a contract or blanket purchase agreement.

(b) Insert the clause at 52.217-11, Reverse Auction—Orders, in solicitations and contracts for a multiple-award contract or blanket purchase agreement when a reverse auction may be used to place orders under the basic contract or blanket purchase agreement.

(c) Insert the clause at 52.217-12, Reverse Auction Services, in all solicitations and contracts for the purchase of reverse auction services.

Part 52 – Solicitation Provisions and Contract Clauses

52.217 [Reserved]

52.217-1 [Reserved]

52.217-2 Cancellation Under Multiyear Contracts.

As prescribed in 17.106(a), insert the following clause:

Cancellation Under Multiyear Contracts (Oct 1997)

(a) "Cancellation," as used in this clause, means that the Government is canceling its requirements for all supplies or services in program years subsequent to that in which notice of cancellation is provided. Cancellation shall occur by the date or within the time period specified in the Schedule, unless a later date is agreed to, if the Contracting Officer-

(1) Notifies the Contractor that funds are not available for contract performance for any subsequent program year; or

(2) Fails to notify the Contractor that funds are available for performance of the succeeding program year requirement.

(b) Except for cancellation under this clause or termination under the Default clause, any reduction by the Contracting Officer in the requirements of this contract shall be considered a termination under the Termination for Convenience of the Government clause.

(c) If cancellation under this clause occurs, the Contractor will be paid a cancellation charge not over the cancellation ceiling specified in the Schedule as applicable at the time of cancellation.

(d) The cancellation charge will cover only-

(1) Costs-

(i) Incurred by the Contractor and/or subcontractor;

(ii) Reasonably necessary for performance of the contract; and

(iii) That would have been equitably amortized over the entire multiyear contract period but, because of the cancellation, are not so amortized; and

(2) A reasonable profit or fee on the costs.

(e) The cancellation charge shall be computed and the claim made for it as if the claim

were being made under the Termination for Convenience of the Government clause of this contract. The Contractor shall submit the claim promptly but no later than 1 year from the date-

(1) Of notification of the nonavailability of funds; or

(2) Specified in the Schedule by which notification of the availability of additional funds for the next succeeding program year is required to be issued, whichever is earlier, unless extensions in writing are granted by the Contracting Officer.

(f) The Contractor's claim may include-

(1) Reasonable nonrecurring costs (see part 15 of the Federal Acquisition Regulation) which are applicable to and normally would have been amortized in all supplies or services which are multiyear requirements;

(2) Allocable portions of the costs of facilities acquired or established for the conduct of the work, to the extent that it is impracticable for the Contractor to use the facilities in its commercial work, and if the costs are not charged to the contract through overhead or otherwise depreciated;

(3) Costs incurred for the assembly, training, and transportation to and from the job site of a specialized work force; and

(4) Costs not amortized solely because the cancellation had precluded anticipated benefits of Contractor or subcontractor learning.

(g) The claim shall not include-

(1) Labor, material, or other expenses incurred by the Contractor or subcontractors for performance of the canceled work;

(2) Any cost already paid to the Contractor;

(3) Anticipated profit or unearned fee on the canceled work; or

(4) For service contracts, the remaining useful commercial life of facilities. "Useful commercial life" means the commercial utility of the facilities rather than their physical life with due consideration given to such factors as location of facilities, their specialized nature, and obsolescence.

(h) This contract may include an Option clause with the period for exercising the option limited to the date in the contract for notification that funds are available for the next succeeding program year. If so, the Contractor agrees not to include in option quantities any costs of a startup or nonrecurring nature that have been fully set forth in the contract. The Contractor further agrees that the option quantities will reflect only those recurring costs and a reasonable profit or fee necessary to furnish the additional option quantities.

(i) Quantities added to the original contract through the Option clause of this contract

shall be included in the quantity canceled for the purpose of computing allowable cancellation charges.

(End of clause)

52.217-3 Evaluation Exclusive of Options.

As prescribed in 17.203(a), insert a provision substantially the same as the following:

Evaluation Exclusive of Options (Nov 2025)

The Government will evaluate offers for award purposes by including only the price for the basic requirement; *i.e.*, options will not be included in the evaluation for award purposes.

(End of provision)

52.217-4 Evaluation of Options Exercised at Time of Contract Award.

As prescribed in 17.203(b), insert a provision substantially the same as the following:

Evaluation of Options Exercised at Time of Contract Award (Nov 2025)

Except when it is determined in accordance with FAR 17.202(b) not to be in the Government's best interests, the Government will evaluate the total price for the basic requirement together with any option(s) exercised at the time of award.

(End of provision)

52.217-5 Evaluation of Options.

As prescribed in 17.203(c), insert a provision substantially the same as the following:

Evaluation of Options (Nov 2025)

Except when it is determined in accordance with FAR 17.202(b) not to be in the Government's best interests, the Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. Evaluation of options will not obligate the Government to exercise the option(s).

(End of provision)

52.217-6 Option for Increased Quantity.

As prescribed in 17.203(d), insert a clause substantially the same as the following:

Option for Increased Quantity (Mar 1989)

The Government may increase the quantity of supplies called for in the Schedule at the unit price specified.

The Contracting Officer may exercise the option by written notice to the Contractor within *[insert in the clause the period of time in which the Contracting Officer has to exercise the option]*. Delivery of the added items shall continue at the same rate as the like items called for under the contract, unless the parties otherwise agree.

(End of clause)

52.217-7 Option for Increased Quantity-Separately Priced Line Item.

As prescribed in 17.203(e), insert a clause substantially the same as the following:

Option for Increased Quantity-Separately Priced Line Item (Mar 1989)

The Government may require the delivery of the numbered line item, identified in the Schedule as an option item, in the quantity and at the price stated in the Schedule. The Contracting Officer may exercise the option by written notice to the Contractor within *[insert in the clause the period of time in which the Contracting Officer has to exercise the option]*. Delivery of added items shall continue at the same rate that like items are called for under the contract, unless the parties otherwise agree.

(End of clause)

52.217-8 Option to Extend Services.

As prescribed in 17.203(f), insert a clause substantially the same as the following:

Option to Extend Services (Nov 1999)

The Government may require continued performance of any services within the limits and at the rates specified in the contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months. The Contracting Officer may exercise the option by written notice to the Contractor within *[insert the period of time within which the Contracting Officer may exercise the option]*.

(End of clause)

52.217-9 Option to Extend the Term of the Contract.

As prescribed in 17.203(g), insert a clause substantially the same as the following: Option to

Extend the Term of the Contract (Mar 2000)

(a) The Government may extend the term of this contract by written notice to the

Contractor within _ *[insert the period of time within which the Contracting Officer may exercise the option]*; provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least _ days *[60days unless a different number of days is inserted]* before the contract expires. The preliminary notice does not commit the Government to an extension.

(b) If the Government exercises this option, the extended contract shall be considered to include this option clause.

(c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed *_(months) (years)*.

(End of clause)

52.217-10 Reverse Auction

As prescribed in 17.804(a), insert the following provision:

Reverse Auction (Aug 2024)

(a) *Definitions.* As used in this provision—

Reverse auction means the process for obtaining pricing, usually supported by an electronic tool, in which offerors see competing offerors' price(s), without disclosure of the competing offerors' identity, and have the opportunity to submit lower priced offers until the close of the auction.

Reverse auction service provider means a commercial or Government entity that provides a means for conducting reverse auctions when acquiring supplies or services to be used by the Government.

(b) *Reverse auction.* The Government intends to conduct a reverse auction under this solicitation to award a contract or blanket purchase agreement.

(c) *Offeror agreement.* By submission of a quote or proposal in response to the solicitation, the Offeror agrees to participate in the reverse auction and agrees that the Government may reveal to all Offerors the offered price(s) in the auction, without revealing any Offeror's identity, except for the awardee's identity subsequent to an award resulting from the auction. The Offeror may withdraw its agreement to further participate in the process by withdrawing its offer before the close of the auction by notifying the Contracting Officer via the contact method identified in the solicitation.

(d) *Only one offer.* If the reverse auction produces only one offer, the Government reserves the right to cancel the auction.

(e) *Release of information.* The Government may use a reverse auction service provider to conduct the reverse auction. Any price or proposal information or source selection information received by the reverse auction service provider in relation to the reverse auction shall not be released, outside of the Government, unless otherwise required by law.

However, this does not prevent the Government from revealing to all Offerors the offered price(s) in the auction, without revealing any Offeror's identity. Price or proposal information includes, but is not limited to—

- (1) Contractor bid or proposal information, as defined at Federal Acquisition Regulation 3.104-1; and
- (2) Information identified by the Offeror as restricted from duplication, use, or disclosure—in whole or in part—for any purpose other than to evaluate the Offeror's price or proposal.

(End of provision)

52.217-11 Reverse Auction—Orders.

As prescribed in 17.804(b), insert the following clause:

Reverse Auction—Orders (Aug 2024)

- (a) *Definitions.* As used in this clause—

Reverse auction means the process for obtaining pricing, usually supported by an electronic tool, in which offerors see competing offerors' price(s), without disclosure of the competing offerors' identity, and have the opportunity to submit lower priced offers until the close of the auction.

Reverse auction service provider means a commercial or Government entity that provides a means for conducting reverse auctions when acquiring supplies or services to be used by the Government.

- (b) *Reverse auction.* The Contracting Officer may conduct a reverse auction to award an order under this contract or blanket purchase agreement.

- (c) *Contractor agreement.* When a reverse auction is conducted under this contract or blanket purchase agreement, the following applies:

(1) The Contractor's or blanket purchase agreement holder's submission of a quote or proposal in response to the solicitation for an order constitutes agreement to participate in the auction.

(2) The Contractor agrees that the Government may reveal to all Offerors the offered price(s) in the auction, without revealing any Offerors' identity, except for the awardee's identity subsequent to an award resulting from the auction.

(3) The Contractor or blanket purchase agreement holder may withdraw its agreement to further participate in the reverse auction by withdrawing its offer. To withdraw an offer made in response to a reverse auction solicitation issued under this contract or blanket purchase agreement, the Contractor or blanket purchase agreement holder shall notify the Contracting Officer of the request before the close of the auction via the contact method

identified in the solicitation.

(4) If the reverse auction produces only one offer, the Government reserves the right to cancel the auction.

(d) *Release of information.* The Government may use a reverse auction service provider to conduct the reverse auction. Any price or proposal information or source selection information received by the reverse auction service provider in relation to the reverse auction shall not be released, outside of the Government, unless otherwise required by law. However, this does not prevent the Government from revealing to all Contractors or blanket purchase agreement holders the offered price(s) in the auction, without revealing any Contractor or blanket purchase agreement holder's identity. Price or proposal information includes, but is not limited to—

(1) Contractor bid or proposal information, as defined at Federal Acquisition Regulation 3.104-1;

(2) Price or proposal information similarly generated for a task order or delivery order or an order under a blanket purchase agreement; and

(3) Information identified by the Contractor or blanket purchase agreement holder as restricted from duplication, use, or disclosure—in whole or in part—for any purpose other than to evaluate the Contractor or blanket purchase agreement holder's price or proposal.

(End of clause)

52.217-12 Reverse Auction Services.

As prescribed in 17.804(c), insert the following clause:

Reverse Auction Services (Aug 2024)

(a) *Definitions.*

Government data means any information, document, media, or machine-readable material regardless of physical form or characteristics, that is created or obtained by the Government, in the course of official Government business.

Government-related data means any information, document, media, or machine-readable material regardless of physical form or characteristics that is created or obtained by a contractor through the storage, processing, or communication of Government data. This does not include a contractor's business records (e.g., financial records, legal records, etc.) or data such as operating procedures, software coding, or algorithms that are not uniquely applied to the Government data.

Reverse auction means the process for obtaining pricing, usually supported by an electronic tool, in which offerors see competing offerors' price(s), without disclosure of the competing offeror's identity, and have the opportunity to submit lower priced offers until the close of the auction.

(b) *Duties of the reverse auction service provider.* When providing reverse auction services to the Government, the Contractor shall—

- (1) Not assert or imply that it can or will obtain a Government contract for the participants of a reverse auction;
- (2) Allow entities to register, at no cost, as potential offerors for any reverse auction conducted on behalf of the Government on the provider's reverse auction platform. As part of the registration process, the Contractor shall allow each entity the opportunity to execute a proprietary data protection agreement with the Contractor; however, the Contractor shall not negotiate terms in the agreement that affect the terms and conditions of a Government solicitation or contract;
- (3) Limit access to, use of, and disclosure of Government data and Government-related data.
 - (i) The Contractor shall not access, use, or disclose Government data unless specifically authorized by the terms of this contract or a task order or delivery order issued hereunder.
 - (ii) If authorized by the terms of this contract or a task order or delivery order issued hereunder, any access to, or use or disclosure of, Government data shall only be for purposes specified in this contract or task order or delivery order.
 - (iii) The Contractor shall ensure that its employees are subject to all such access, use, and disclosure prohibitions and obligations.
 - (iv) These access, use, and disclosure prohibitions and obligations shall survive the expiration or termination of this contract.
 - (v) The Contractor shall notify the Contracting Officer promptly of any requests from a third party for access to Government data or Government-related data, including any warrants, seizures, or subpoenas it receives, including those from another Federal, State, or local agency. The Contractor shall cooperate with the Contracting Officer to take all measures to protect Government data and Government-related data from any unauthorized disclosure.
- (4) Assert no right or license in the data gathered or generated during a reverse auction. Use Government-related data only to manage the operational environment that supports the Government data and for no other purpose unless otherwise permitted with the prior written approval of the Contracting Officer.
- (5) Protect from unauthorized use or disclosure and not release outside of the Government any price or proposal information or any source selection information (see Federal Acquisition Regulation (FAR) 2.101) received by the Contractor in relation to a reverse auction. Price or proposal information shall include, but is not limited to—
 - (i) Contractor bid or proposal information, as defined at FAR 3.104-1;

- (ii) Price or proposal information similarly generated for a task order or delivery order or an order under a blanket purchase agreement; and
- (iii) Information identified by the reverse auction participant as restricted from duplication, use, or disclosure—in whole or in part—for any purpose other than to evaluate the reverse auction participant's price or proposal;
- (6) Allow offerors to see the successive lowest price(s) offered in the auction without revealing an offeror's identity;
- (7) Not participate as an offeror in any reverse auction, which the Contractor is hosting on behalf of the Government. This prohibition includes participation in a reverse auction by any entity with which the Contractor has a relationship that raises an actual or potential conflict of interest;
- (8) At the close of each auction—
 - (i) Provide the Contracting Officer with the successful offer, along with information that separately identifies the offeror's price and the price for each provider fee or charge included in the total price; and
 - (ii) Provide the Contracting Officer with all information and documentation received from reverse auction participants in response to the reverse auction.

(End of clause)